

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

PHILLIP ALBERTERNST,	)	
	)	
Plaintiff,	)	
v.	)	4:10-cv-642 JEH
	)	
CHRISTOPHER E. HUNT, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS DRUG TASK FORCE OFFICER DEPUTY CHRIS HUNT, DRUG  
TASK FORCE OFFICER DEPUTY WILLIAM ROWE AND ST. CHARLES  
COUNTY' S MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, AND VI  
OF PLAINTIFF'S COMPLAINT

COMES NOW Defendants St. Charles County, Drug Task Force Officer Deputy  
Chris Hunt and Drug Task Force Officer Deputy William Rowe, by and through  
undersigned counsel, and files their Suggestions in Support of their Motion for Summary  
Judgment on Counts I, II, and VI pursuant to Federal Rule of Civil Procedure 56.<sup>1</sup>

As grounds for this Motion, and as more fully set forth in the Suggestions,  
Defendants move for Summary judgment as follows:

1. After review of the evidence and based upon the undisputed material facts in  
the record, as well as the applicable law, Defendants St. Charles county, hunt  
and Rowe are entitled to summary judgment on Count I in that Plaintiff has

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<sup>1</sup>County V was previously dismissed by this Court's Order dated 15 June, 2010.  
(Doc 53).

failed to state a cause of action for excessive force under 42 U.S.C § 1983 and the Fourth Amendment of the United States Constitution in that the uncontroverted material facts support that Deputies Hunt and Rowe did not use excessive force on Plaintiff, but rather used only the amount of force that a reasonable officer would have used in the moment needed to end the Plaintiff's resisting arrest. Further, the defendants' evidence that Plaintiff did resist arrest is so objectively compelling that no reasonable juror could believe that Plaintiff did not resist arrest.

2. This Court should grant Defendants summary judgment on Count II in that Defendant St. Charles County was not the overseeing authority on this law enforcement activity. Further, assuming the Court determined St. Charles County was the relevant law enforcement authority, the County has adopted policies to prevent excessive force, it has extensively trained its officers, including in appropriate force techniques and all evidence is that the County has no policy, custom or history of allowing excessive force actions by its officers.
3. This Court should grant Defendants summary judgment on Count VI in that the defendants' evidence is so objectively compelling that no reasonable juror could believe that Defendants committed assault and battery against Plaintiff.
4. In addition, on his claim pursuant to 42 U.S.C. § 1983 Plaintiff sued

Defendants Hunt and Rowe in their individual capacity. Defendants are entitled to qualified immunity. On Count VI, which is a state law assault and battery claim, Defendants have official immunity.

In support of this Motion for Summary Judgment, Defendants rely upon their Memorandum filed in support of this Motion, the Statement of Uncontroverted Material Facts and upon all Exhibits submitted in support of this Motion, Statement of Uncontroverted Material Facts and Suggestions.

WHEREFORE, Defendants St. Charles County, Hunt and Rowe move this Court to grant this Motion for Summary Judgment and dismiss Petitioner's Complaint against them with prejudice and to award them their attorneys fees and costs.

Respectfully submitted,

/s/ Joann Leykam

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the above document was served via the ECF/CM system of the United States District Court for the Eastern District of Missouri this 14th day of September, 2011, addressed to:

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\_\_\_/s/ Joann Leykam\_\_\_\_\_